Supreme Court, U.S.
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No. 93-1148
No. 93-1149

In the Supreme Court of the United States
October Term, 1993

ALEXANDER LOCE,
Petitioner,
vs.

THE STATE OF NEW JERSEY,
Respondent.

TINA KRAIL, LORI CHADWICK, DEBORAH SMOLDORE AND JEANNIE HENDERSON,
Petitioners,
vs.

THE STATE OF NEW JERSEY,
Respondent.

On Petition for a Writ of Certiorari to the New Jersey Supreme Court

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Brief of Respondent in Opposition to Petition for Writ of Certiorari

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QUESTION PRESENTED

Does the federal Constitution prevent a State from punishing criminal conduct simply because that conduct is intended to prevent a lawful abortion?

STATEMENT OF THE CASE

On September 8, 1990, petitioners entered a medical facility in Morristown, N.J., where petitioner Alexander Loce's fiancee was to end her eight-week pregnancy. They bound themselves with handcuffs and bicycle locks to block the operating room.

Petitioners were convicted of criminal trespass, N.J.S.A. 2C:18-3, in the Morristown Municipal Court.[1] (A-186 to

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[1] N.J.S.A. 2C:18-3b(1) provides:

> A person commits a petty disorderly persons offense if, knowing that he is not licensed

A-201).[2] Their convictions were affirmed by the Law Division and the Appellate Division. (A-82 to A-108). By Order dated October 19, 1993, the New Jersey Supreme Court denied review. (A-204).

SUMMARY OF ARGUMENT

The federal Constitution does not prevent a State from punishing criminal conduct simply because that conduct is intended to prevent a lawful abortion.

> or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
>
> (1) Actual communication to the actor...

[2]A shall refer to petitioner Loce's appendix.

ARGUMENT

PETITIONERS HAVE SHOWN NO SUBSTANTIAL BASIS FOR CERTIORARI.

Petitioners have shown no special and important reason to grant this petition. Therefore, it must be denied. R. 10.1.

This is a criminal-trespass case. It is not an abortion case. It does not involve the issue of when life begins. It does not, as petitioners claim, implicate the equal-protection clause or the due-process clause. Petitioners should not be allowed to twist a simple trespass case into a re-examination of Roe v. Wade, 410 U.S. 113 (1973), reh. den., 410 U.S. 959 (1973).

Petitioners' anti-abortion views do not place them beyond the reach of state criminal law. This is a settled question.

In Bray v. Alexandria Women's Health Clinic, 506 U.S. ___, 113 S.Ct. 753

(1993), this Court noted that the disruption of abortion facilities can be remedied through state criminal law:

> Trespassing upon private property is unlawful in all States, as is, in many States and localities, intentionally obstructing the entrance to private premises. These offenses may be prosecuted criminally under state law, and may also be the basis for state civil damages. (emphasis added)
> Id., at 768.

See also, Wichita v. Tilson, 855 P.2d 911 (Kan. 1993), cert. den., ___ U.S. ___, 114 S.Ct. 468 (1993) (this Court refused to review decision rejecting actor's asserted right to violate state criminal law to prevent abortions).

A woman has a right to a first-trimester abortion. Roe v. Wade, supra. See also, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. ___, 112 S.Ct. 2791 (1992). It defies reason to suggest that an actor may

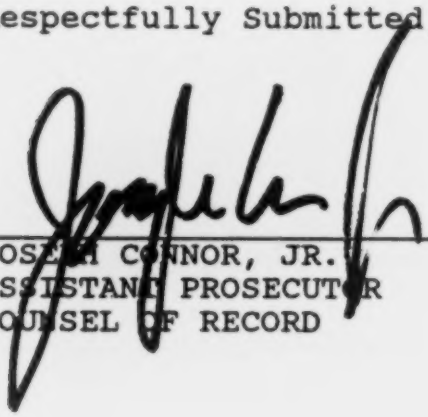
lawfully engage in criminal conduct to prevent the exercise of what has been held to be a woman's right to a first-trimester abortion. This is especially true when the criminal conduct involves a statute unrelated to abortion. To allow activists to challenge long-established precedents by violating a criminal statute unrelated to the issue they seek to raise would be to invite anarchy.

The municipal judge's finding that life begins at conception is dicta. It is irrelevant to the elements of and defenses to criminal trespass. The municipal prosecutor presented no expert testimony. A municipal judge's gratuitous finding, based on such a one-sided record, does not warrant review by this Court. This dicta cannot convert a simple trespass case into a re-examination of Roe v. Wade.

CONCLUSION

Respondent respectfully requests that this petition be denied.

Respectfully Submitted,



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